Rule 605. Judge's Competency as a Witness.

The judge presiding at trial may not testify as a witness at the trial. A party need not object to preserve the issue.

Comment to 2012 Amendment

The language of Rule 605 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Cases

605.010 A judge presiding at a trial may not testify in that trial as a witness, thus if the judge has personal knowledge of a disputed evidentiary fact or may be a material witness in the proceeding, the judge should disqualify him- or herself.

State v. Fisher, 176 Ariz. 69, 859 P.2d 179 (1993) (defendant's wife entered into plea agreement that required her to testify consistently with her prior statements, and trial judge signed it along with other parties; because this agreement was admitted in evidence at defendant's trial and because effect of this agreement on wife was a matter of dispute, this put judge in a position where he should have disqualified himself).

605.020 A trial judge may testify in a different proceeding about factual matters, but may not testify about what he or she would have done in the first proceeding if faced with a different situation.

Reed v. Mitchell & Timbanard, 183 Ariz. 313, 903 P.2d 621 (Ct. App. 1995) (plaintiff claimed that attorneys were negligent because they did not include a security agreement in divorce decree; first judge would not have been allowed to testify whether he would have signed decree if security agreement had been included in it).

DeForest v. DeForest, 143 Ariz. 627, 694 P.2d 1241 (Ct. App. 1985) (first judge entered order that marriage would be dissolved upon presentment of formal decree, which was never prepared; 1½ years later second judge entered *nunc pro tunc* decree; first judge allowed to testify about terms of settlement agreement).

State v. Miller, 128 Ariz. 112, 624 P.2d 309 (Ct. App. 1980) (judge who presided at civil trial involving defendant allowed to testify at defendant's criminal trial and give opinion of defendant's credibility).

605.030 Trial judge should not communicate with jurors without notifying the parties and giving them the opportunity to be present.

State v. McDaniel, 136 Ariz. 188, 665 P.2d 70 (1983) (any communication between judge and jurors after jurors begin deliberations, without prior notice to defendant and counsel, is error; trial court erred in answering questions from jurors, but error was harmless).

State v. Mata, 125 Ariz. 233, 609 P.2d 48 (1980) (during trial, juror asked bailiff to clarify what one witness had said, and judge told bailiff to tell juror to rely on testimony he had heard; another juror asked bailiff if defendant and his brother were being tried together, and trial

court told bailiff to tell juror that would be clarified by court's instructions; because judge did not give any information to jurors, court held any error was harmless).

605.040 If the trial judge communicates with jurors without notifying the parties, a party must object upon learning of such contact to allow the trial court to correct any error; if the party does not object, the party will have waived any claim of error.

State v. Mata, 125 Ariz. 233, 609 P.2d 48 (1980) (when it appeared one juror may have seen defendant in handcuffs, parties agreed to have judge question juror with reporter but without attorneys; during trial, juror who was pregnant told judge she might not be able to continue, so judge discussed matter with juror and her doctor, and later told attorney what had happened, and no one objected; court held any error waived for lack of a timely objection).